

§ 26.29

hearing before an administrative law judge.

Response means the written response to a complaint, admitting or denying the allegations in the complaint and setting forth any affirmative defense and/or any mitigating factors or extenuating circumstances. The response shall be submitted to the Office of General Counsel that initiates the complaint or to such other office as may be designated in the complaint. A response is deemed a request for a hearing.

§ 26.29 Powers and duties of the Administrative Law Judge (ALJ).

The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and ensure that a record of the proceeding is made. The ALJ is authorized to:

- (a) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;
- (b) Continue or recess the hearing in whole or in part for a reasonable period of time;
- (c) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;
- (d) Administer oaths and affirmations;
- (e) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;
- (f) Rule on motions and other procedural matters;
- (g) Regulate the scope and timing of discovery;
- (h) Regulate the course of the hearing and the conduct of representatives and parties;
- (i) Examine witnesses;
- (j) Receive, rule on, exclude, or limit evidence;
- (k) Upon motion of a party, take official notice of facts;
- (l) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;
- (m) Conduct any conference, argument, or hearing on motions in person or by telephone; and
- (n) Exercise such other authority as is necessary to carry out the respon-

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sibilities of the ALJ under subpart B of this part.

§ 26.30 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 26.31 Disqualification of ALJ.

- (a) An ALJ in a particular case may disqualify himself or herself.
- (b) A party may file with the ALJ a motion for the ALJ's disqualification. The motion shall be accompanied by an affidavit alleging the grounds for disqualification.
- (c) Upon the filing of a motion and affidavit, the ALJ shall proceed no further in the case until the matter of disqualification is resolved.

§ 26.32 Parties to the hearing.

- (a) *General.* The parties to the hearing shall be the respondent and HUD.
- (b) *Rights of parties.* Except as otherwise limited by subpart B of this part, all parties may:
 - (1) Be accompanied, represented, and advised by a representative;
 - (2) Participate in any conference held by the ALJ;
 - (3) Conduct discovery;
 - (4) Agree to stipulations of fact or law, which shall be made part of the record;
 - (5) Present evidence relevant to the issues at the hearing;
 - (6) Present and cross-examine witnesses;
 - (7) Present oral arguments at the hearing as permitted by the ALJ; and
 - (8) Submit written briefs and proposed findings of fact and conclusions of law after the hearing, as permitted by the ALJ.

§ 26.33 Separation of functions.

No officer, employee, or agent of the Federal Government engaged in the performance of investigative, conciliatory, or prosecutorial functions in connection with the proceeding shall, in